

STATE OF CALIFORNIA  
EDUCATIONAL EMPLOYMENT RELATIONS BOARD

JUDICIAL REVIEW ORDER

|   |   |                      |
|---|---|----------------------|
| In the Matter of Petition for Judicial Review | ) |                      |
|   | ) |                      |
| SWEETWATER UNION HIGH SCHOOL DISTRICT,        | ) |                      |
| Employer                                      | ) |                      |
|   | ) |                      |
| and   | ) |                      |
|   | ) | LA-R-27, 28, and 696 |
| CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION,      | ) | EERB Decision No. 4  |
| CHAPTER 471,                                  | ) |                      |
| Employee Organization, <u>PETITIONER</u>      | ) |                      |
|   | ) |                      |
| and   | ) | EERB Order No. JR-1  |
|   | ) |                      |
| UNITED PUBLIC EMPLOYEES, LOCAL 390,           | ) |                      |
| SERVICE EMPLOYEES INTERNATIONAL UNION,        | ) |                      |
| AFL-CIO,                                      | ) |                      |
| Employee Organization                         | ) |                      |
|   | ) |                      |
|   | ) |                      |

---

Pursuant to Government Code Section 3542(a)(1), the Educational Employment Relations Board hereby declines request of petitioner in the above-captioned case to join in judicial review of EERB unit determination decision #4.

The Board does not agree that the case is "one of special importance" as set forth in Section 3542(a)(1).

Educational Employment Relations Board

by



Stephen Barber

Executive Assistant to the Board

4/29/77

Chairman Alleyne, dissenting:

I dissent from the Board Order denying CSEA's request for judicial review of the Board's decision that head custodians are supervisors within the meaning of the

Act.<sup>1</sup> CSEA has been certified as the exclusive representative of the employees in a negotiating unit which would have included head custodians but for the EERB's decision that head custodians are supervisors within the meaning of Government Code Section 3540.1(m).<sup>2</sup> This means that negotiations between CSEA and the district may begin, if they have not already begun.

Government Code Section 3542(a) provides:

No employer or employee organization shall have the right to judicial review of a unit determination except: (1) when the board in response to a petition from an employer or employee organization, agrees that the case is one of special importance and joins in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint.

The Board's decision not to join in CSEA's request for judicial review merely delays CSEA's opportunity to appeal the Board's head custodians decision to the Superior Court and from there to higher courts should that be desired.

The Board's decision not to join CSEA's request for judicial review cannot prevent CSEA from seeking judicial review of the head custodians issue by means of an unfair practice charge. CSEA may now request that the school district negotiate in respect to head custodians in order to set up a refusal by the district based on the Board's Sweetwater decision that head custodians are supervisors within the meaning of the EERA and hence not eligible for inclusion in the operations-support services unit now represented by CSEA.

---

<sup>1</sup> Sweetwater Union High School District, EERB Decision No. 4, November 23, 1976.

<sup>2</sup> The election was held on February 16, 1977. CSEA was certified on March 28, 1977, as the exclusive representative in an operations-support services unit.

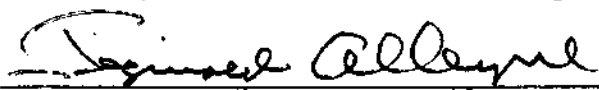
If that request is made by CSEA and the district refuses to negotiate concerning head custodians, CSEA may then file a refusal-to-negotiate charge with the EERB. Once that case has been heard by an EERB hearing officer and the EERB decides, consistent with its head custodians decision in the representation case, that the district did not improperly refuse to bargain over head custodians, CSEA may appeal that EERB decision to the Superior Court, and from there to higher courts, without asking the EERB to join in the appeal. To allow the appeal now, under Government Code Section 3542(a)(1), would speed resolution of the issue and would avoid using the time of the district, CSEA, a Board hearing officer and the Board itself in what will amount to a pro forma unfair practice proceeding. I, accordingly, believe that the appeal should be allowed in advance of an unfair practice case.

This case is one of "special importance" within the meaning of Government Code Section 3542(a)(1) because the issue of whether head custodians are supervisors has been raised in many of the classified representation cases before the EERB, and unlike some unit issues, this one involves a single classification in the classified work force. It therefore may be appealed to the judiciary without holding up negotiations. Another reason why this is a case of "special importance" within the meaning of Government Code Section 3542(a)(1) is that the EERB has rendered apparently conflicting decisions on the head custodian issue and the conflict should be resolved by the judiciary.<sup>3</sup>

---

3

Compare ~~Sweetwater Union High School District~~, EERB Decision No. 4, November 23, 1976, ~~San Diego Unified School District~~, EERB Decision No. 8, February 18, 1977, holding that head custodians (or their equivalent under another job title) are supervisors within the meaning of the Act, with ~~Foothill DeAnza Community College~~, EERB Decision No. 10, March 1, 1977, holding on facts similar to those in ~~Sweetwater~~ and ~~San Diego~~ that custodial, construction and grounds foremen are not supervisors within the meaning of the Act.



Reginald Alleyne, Chairman